



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

March 27, 2014

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Henry A. Waxman
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Greg Walden
Chairman
Subcommittee on Communications and
Technology
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Anna G. Eshoo
Ranking Member
Subcommittee on Communications and
Technology
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Upton, Ranking Member Waxman, Chairman Walden and Ranking Member Eshoo:

I am writing to update you regarding the Federal Communications Commission's activities to fulfill our commitment to promote diversity, localism and competition in broadcast services. At the Commission's upcoming March 31 Open Meeting, we will consider several items concerning media ownership rules that are now in effect, as well as proposed rules that aim to increase clarity and consistency in meeting our statutory obligations. Some of these topics have also been the subject of recent discussion in your Committee.

Quadrennial Review of Media Ownership Rules

As you know, the Commission has an ongoing review of its media ownership rules. Congress has mandated that the Commission review its media ownership rules on a quadrennial basis. The last review began in 2010 and has dragged on for far too long, exceeding its four-year timetable. It is my understanding that several times over the past couple of years there has been an attempt to close out the 2010 Quadrennial Review with a vote of the Commissioners. However, there exist significant and diverse concerns among the various Commissioners regarding components of that report. These concerns have prevented the closure of that Review. The consequence of this is that the record is old; while it contains useful information, it has not kept pace with the rapid change in the media ecosystem.

While to be meaningful any review of the media market must take into account all that is rapidly happening in that space, it is also true that the Commission cannot drag its feet on making decisions regarding the important issues raised by the evolution of the media marketplace. Therefore, I intend to move forward with the new 2014 Quadrennial Review on an accelerated basis. Incorporating the record from the 2010 Review (which will remain open) with a new sense of urgency, I have concluded that the 2014 Review should be completed in two years.

I have, therefore, instructed the Media Bureau to expedite the 2014 Quadrennial Review so that recommendations can be presented to the Commissioners no later than June 30, 2016. We will set up a special team to assure the acceleration of this effort. The Review will be a fact-based inquiry into the rapidly changing media market that is designed to provide the Commission with data to enable a full consideration of all the issues bearing on broadcast ownership and our statutory mandate. This review may result in recommended changes in the current rules, but until that process is completed it is the Commission's responsibility to ensure that the rules that are in force are the rules that the Commission will enforce.

Enforcement of Existing Media Ownership Rules

We have spoken a great deal together about matters related to the processes and procedures of the FCC. As you know, we are in the midst of implementing a process reform initiative that I made a priority from the beginning of my tenure as Chairman. The actions that we will consider with regard to so-called "sidecar" agreements between broadcast licensees fit squarely within the kinds of process reforms we agree are necessary. Moreover, these actions, which focus on more open, transparent and effective enforcement of Commission rules that are currently on the books, can and should be addressed separately from our Quadrennial Review of media ownership rules.

Improving transparency is among the core reforms in which we all believe. For far too long, there has been a lack of transparency in the enforcement of the Commission's broadcast ownership rules. Regulatory decisions involving transactional review of applications for transfer of control often relied on informal, unwritten criteria and substituted analysis of actual economic effects with formulaic reading of contract language. Specifically, the use of Joint Sales Agreements (JSAs) and Shared Services Agreements (SSAs) and how they implicate the Commission's broadcast ownership limits were negotiated between Commission staff and lawyers for the licensees out of public view and without reference to any publicly adopted standard. The Order we will consider on March 31 ends that practice for JSAs. Similarly, we will also consider a Notice of Proposed Rulemaking (NPRM) proposing that SSAs should be filed with the Commission so that the nature and frequency of their use will be on the public record (with confidentiality protected as appropriate).

By moving decisions on broadcast ownership into the open, we will enable the public and the Commission to consider more fully and appropriately the public interest issues raised by the implementation of the Commission's rules. Historically, the Commission's rules have prohibited one television broadcaster from owning more than one licensee in small and medium-size markets. The purpose of this is to foster competition, localism, and a diversity of voices in the public interest. In the last few years, however, some broadcasters approached the Commission to approve agreements that effectively granted them ownership without a formal transfer of control. This practice rapidly evolved from an exception to common practice, with the number of such agreements ballooning in recent years to become a direct means of circumventing the Commission's ownership rules. In the case of public companies, the Securities and Exchange Commission filings acknowledge this reality in unmistakable terms.

Therefore, on March 31st, the Commission will formally consider rules on sidecar agreements. The specific proposal will be to apply to television broadcasters with regard to JSAs the exact same ownership attribution rule that has applied to radio broadcasters for more than a decade.

Similarly, the Commission will consider opening a rulemaking asking whether SSAs between stations should be filed with the Commission so it can assess the impact of the practices on the ownership rules and determine whether additional rules are necessary.

Of course, sidecar arrangements are not limited to circumstances in which multiple stations share the cost of operation, as through a JSA or SSA. They also involve financial linkages between stations. Taken in their totality, these sharing and financial arrangements can serve to transfer effective, if not complete, control of one supposedly “independently-owned” station to a party that owns another station in the same market.

When I came to the Commission in November of last year, the Media Bureau was considering the acquisition by Gannett Broadcasting of the assets of Belo Broadcasting. As I was briefed on the transaction, I discovered decisions being made on a set of informal requirements that had never been promulgated to the public in a transparent manner, and that were changing over time without written explanation. This is irreconcilable with the kind of transparent and open government that you and I have discussed. These decisions specifically dealt with agreements designed to circumvent the Commission’s hard and fast ownership limit rule. In the Order ruling on that acquisition, two explicit paragraphs reminded broadcast attorneys that satisfaction of the public interest standard required confronting openly the full economic effects of proposed transactions. The Order stressed that:

Congress’ express statutory command is that license transfers must satisfy the ‘public interest, convenience, and necessity,’ a standard that is always informed by regulatory standards, but which necessarily involves, as our licensing decisions have long noted, the use of a “case-by-case” approach...[A]pplicants and interested parties should not forget that our public interest mandate encompasses giving careful attention to the economic effects of, and incentives created by, a proposed transaction taken as a whole and its consistency with the Commission’s policies under the Act, including our policies in favor of competition, diversity, and localism.¹

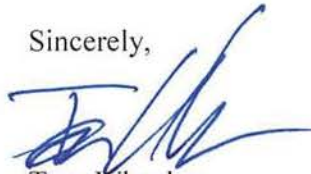
In the wake of the Gannett-Belo Order and the two paragraphs that I mention above, the Media Bureau concluded that, for the sake of transparency and the even application of the law, it needed to reaffirm the congressional command that the legal standard for deciding the transfer of licenses under Section 301(d) is the “public interest, convenience, and necessity” and that, of course, no single set of unwritten, little understood formulations can replace the Commission’s responsibility to apply that standard with an understanding of the totality of the facts. That is no change of policy; it is the policy enacted by Congress and the statute that I have sworn to enforce. In this regard, the Media Bureau Public Notice, far from being new, is a procedurally correct, open, and transparent statement, giving broadcasters notice that the Bureau will assess transactions by considering the “public interest” standard by which we are bound.

¹ *Shareholders of Belo Corp.*, Memorandum Opinion and Order, DA 13-2423 (MB rel. Dec. 20, 2013), at ¶¶ 29, 30.

An essential component of these items that we will consider is a realization that sidecar agreements are not *per se* in opposition to the public interest. There are instances – such as when they expand the diversity of voices in a community through sharing expenses between truly independent stations – that are in the public interest. The Commission should continue to permit – and, in fact, encourage – such arrangements. What’s more, it should move expeditiously in considering such arrangements where they are proposed. What the Commission should not permit, however, is that a policy originally designed to assist efficiency-creating arrangements in furtherance of the public interest be hijacked to become a process that permits entities to regularly evade both the letter and spirit of the Commission’s rules. Establishing a clear and transparent set of guidelines in place of the current non-transparent process will promote specific public interest goals such as ownership diversity.

I hope the above is helpful and informative.

Sincerely,



Tom Wheeler